



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**
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Office of the
Secretary

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Secretary's Order No. 2006-S-0044

**Re: Withdrawal of Proposed Regulation and Closure of the Start Action Notice No.
2003-07 Rulemaking Proceeding, Which Proposed to Amend Regulations on
Beach Protection and Use of Beaches**

Date of Issuance: October 12, 2006

Effective Date: October 12, 2006

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 *Del. C.* §§8001 *et seq.*, 29 *Del. C.* §§10111 *et seq.* and 7 *Del C.* §6010 (a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding to terminate the above-referenced proposed rulemaking proceeding.

On May 21, 2003, the Department opened a proposed rulemaking proceeding in a Start Action Notice ("SAN") 2003-07, for the purpose of amending the existing regulations promulgated to implement the Beach Protection Act. 7 *Del C. Chapter 68.* ("Act"). The rulemaking proceeding was commenced in order to propose changes to the Act's regulations, which have been in effect unchanged since 1983 despite several significant changes to the Act since 1983. The Department's informal rulemaking process included public workshops held on July 1, 2003, July 16, 2003, and March 16, 2005. The Department undertook considerable effort to include public participation in the development of the proposed regulation. The Department concluded its informal

process with the November 1, 2005, publication of the proposed regulation in the Delaware Register of Regulations and in newspapers of general circulation in Delaware, as required by state law. The public hearing was held in Dover on December 14, 2005, which was continued at Bethany Beach on January 13, 2006.

Since the public hearing, the Delaware General Assembly passed legislation that amended the Act, which Governor Minner signed into law. The Department has determined that the recent amendments to the Act will require the Department to amend its current regulations, and would require the Department to amend the proposed regulations in order to conform to the change in law. The Department could amend the proposed regulation pending in SAN 2003-07, but hereby determines to first withdraw the pending proposed regulations, and terminate the pending proposed rulemaking proceeding commenced by SAN 2003-07. The Department will then commence a new rulemaking proceeding through issuance of a new SAN in the future. The Department's decision to withdraw the pending proposed regulations and to terminate the SAN 2003-07 rulemaking proceeding is based upon concerns that having the new proposed rulemaking proceeding included as part of SAN 2003-07 rulemaking proceeding would confuse the public. The new proposed rulemaking proceeding will be significantly changed as a result of the change in the law, and the Department believes it is better to start over as the nature and extent of the changes needed to comply with the recent change to the Act is best done in a new rulemaking proceeding. The Department's future rulemaking proceeding will be sent or e-mailed to all interested persons, including those who participated in the pending proposed rulemaking proceeding.

The Department is aware of the public's concerns with the public notice of the pending proposed regulation that is being withdrawn by this Order. The Department complied with Delaware law in the public notice procedures, and also undertook considerable efforts to inform the persons who would be likely affected by the proposed

regulation. The Department recognizes that many interested persons did not receive notice until the public hearing, and this Order should allow them to receive notice, or they can subscribe to the Department's public notice e-mail service that is available of the Department's web page.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary and 29 *Del C. §10118(d)*, hereby withdraws the proposed regulation published in the Delaware Register of Regulations on November 1, 2005;
2. The Department hereby closes its proposed rulemaking that commenced with Start Action Notice No.2003-07, and the Department shall have this Order published in the Delaware Register of Regulations and in newspapers in the same manner as the notice of the proposed regulation; and
3. The Department shall provide notice to the persons affected by the Order, as determined by the Department, including all those who submitted comments to the Department, who otherwise participated in the public hearing, and who requested to receive notice of all actions on proposed regulations.

s/John A. Hughes

John A. Hughes
Secretary